

overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$1,386.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On May 27, 2004 appellant, then a 66-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that she developed post-traumatic stress disorder (PTSD) and major depression due to termination of her employment by the employing establishment. On September 22, 2004 OWCP accepted her claim for PTSD. It paid appellant wage-loss compensation on the supplemental rolls, effective January 3, 2003 and on the periodic rolls effective October 31, 2004. On October 1, 2004 appellant completed a claim for compensation (Form CA-7) in which she noted that her retirement system was Federal Employees Retirement System (FERS).

On February 27 and July 2, 2020 OWCP forwarded a FERS/SSA dual benefits form to the SSA to obtain the information necessary for a determination of whether an offset of compensation benefits was required.

On July 13, 2020 OWCP received from SSA a June 24, 2020 FERS/SSA dual benefits form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since January 2003. The form reported appellant's SSA age-related retirement benefit rates with and without a FERS offset as follows: beginning January 2003, the SSA rate with FERS was \$1,418.00 and without FERS was \$549.00; beginning March 2003, the SSA rate with FERS was \$1,417.70 and without FERS was \$549.70; beginning December 2003, the SSA rate with FERS was \$1,447.60 and without FERS was \$560.60; beginning January 2004, the SSA rate with FERS was \$1,479.60 and without FERS was \$560.60; beginning December 2004, the SSA rate with FERS was \$1,519.20 and without FERS was \$576.20; beginning January 2005, the SSA rate with FERS was \$1,533.20 and without FERS was \$576.20; beginning December 2005, the SSA rate with FERS was \$1,596.50 and without FERS was \$599.50; beginning December 2006, the SSA rate with FERS was \$1,648.50 and without FERS was \$619.50; beginning December 2007, the SSA rate with FERS was \$1,686.40 and without FERS was \$633.40; beginning December 2008, the SSA rate with FERS was \$1,784.40 and without FERS was \$670.40; beginning December 2009, the SSA rate with FERS was \$1,784.50 and without FERS was \$670.50; beginning December 2010, the SSA rate with FERS was \$1,784.50 and without FERS was \$670.50; beginning December 2011, the SSA rate with FERS was \$1,848.90 and without FERS was \$683.90; beginning December 2012, the SSA rate with FERS was \$1,879.90 and without FERS was \$705.90; beginning December 2013, the SSA rate with FERS was \$1,907.90 and without FERS was \$716.90; beginning December 2014, the SSA rate with FERS was \$1,940.90 and without FERS was \$728.90; beginning December 1, 2015, the SSA rate with FERS was \$1,940.90 and without FERS was \$728.90; beginning December 2016, the SSA rate with FERS was \$1,946.00 and without FERS was \$731.00; beginning December 2017, the SSA rate with FERS was \$1,985.00 and without FERS was \$746.00; beginning December 2018, the SSA rate with FERS was \$2,040.50 and without FERS was \$766.50; and beginning December 2019, the SSA rate with FERS was \$2,073.60 and without FERS was \$778.60.

OWCP completed a FERS offset overpayment calculation worksheet on August 11, 2020. It calculated the overpayment amount by determining the daily FERS offset amount and

multiplying that amount by the number of days in each period from January 3, 2003 through November 30, 2018, resulting in an overpayment of \$210,666.56 and in each period from December 1, 2018 through July 18, 2020, resulting in an overpayment of \$25,191.92, for a total overpayment of \$235,858.48.

On April 5, 2021 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$235,858.48 for the period January 1, 2003 through July 18, 2020, for which she was without fault, because her wage-loss compensation payments had not been reduced to offset her SSA age-related retirement benefits attributable to federal service. It requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation to determine a reasonable repayment schedule and advised that she could request waiver of recovery. OWCP further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, it provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written record or a prerecoument hearing.

In an overpayment action request form received on May 4, 2021, appellant requested that OWCP requested waiver of recovery because she was without fault in the creation of the overpayment. She submitted an undated Form OWCP-20 listing her monthly income of \$5,779.02 including \$1,952.00 in SSA benefits and \$3,827.02 in her FECA benefits. Appellant listed her monthly expenses of \$1,452.95 for rent, \$590.00 for tithing, \$700.00 for food, \$100.00 for clothing, \$627.39 for utilities, \$1,000.00 for medical care, \$936.05 for miscellaneous expenses, and \$200.00 in monthly credit card expenses, resulting in total monthly expenses of \$5,606.39. She listed assets of \$8,310.51 in a checking account and \$8,500.42 in a savings account, resulting in total assets of \$16,810.93.

By decision dated May 12, 2021, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$235,858.48 for the period January 1, 2003 through July 18, 2020, for which she was without fault. It denied waiver of recovery of the overpayment, noting that appellant provided no financial documentation to support her reported monthly income and expenses. OWCP required recovery of the overpayment by deducting \$1,386.00 every 28 days from her continuing compensation payments.

On May 17, 2021 OWCP issued an amended final overpayment determination, finding that appellant was entitled to a compromise of the debt due to her age and ability to repay the debt. It suspended the accrual of interest and fees on her debt and reduced the principle of the debt to \$183,569.82. OWCP again found that appellant was without fault in the creation of the overpayment and required recovery of the overpayment by deducting \$1,386.00 every 28 days from her continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the

performance of his or her duty.² Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.³

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁴ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$235,858.48, compromised to \$183,569.82 for the period January 1, 2003 through July 18, 2020, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

The evidence of record indicates that, while appellant was receiving wage-loss compensation benefits under FECA, she also was receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁶ The information provided by SSA establishes that appellant received SSA age-related retirement benefits that were attributable to federal service during the period January 3, 2003 through July 18, 2020. Consequently, the fact of the overpayment has been established.⁷

To determine the amount of the overpayment, the portion of SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amounts of SSA age-related retirement benefits that were attributable to federal service. SSA provided its age-related retirement benefit rates with FERS and without FERS for specific periods from January 3, 2003 through July 18, 2020. OWCP provided its overpayment calculations for each relevant period, based on the SSA form, and properly

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d); *G.R.*, Docket No. 21-0209 (issued December 20, 2021); *L.D.*, Docket No. 21-0447 (issued September 28, 2021); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997); *G.R.*, *id.*; *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁶ *Id.*

⁷ *M.S.*, Docket No. 20-0068 (issued May 14, 2021); *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

determined that appellant received an overpayment of compensation in the amount of \$235,858.48, compromised to \$183,569.82.

The Board thus finds that appellant received an overpayment of compensation in the amount of \$235,858.48, compromised to \$183,569.82, for the period January 3, 2003 through July 18, 2020.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.⁸ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.⁹

Section 10.437 of OWCP's implementing regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that, such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁰

Section 10.438 of the implementing regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery on an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹¹ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

⁸ 5 U.S.C. § 8129(a)-(b).

⁹ *M.S.*, *supra* note 7; *L.S.*, 59 ECAB 350 (2008). 20 C.F.R. § 10.436. OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁰ 20 C.F.R. § 10.437; *see M.S.*, *id.*; *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹¹ *Id.* at § 10.438(a).

¹² *Id.* at § 10.438.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹³

In its preliminary overpayment determination dated April 5, 2021, OWCP provided a Form OWCP-20 and requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses and assets.

Appellant submitted a completed Form OWCP-20 on May 4, 2021; however, she did not submit any financial documentation to support her reported monthly income and expenses. As appellant did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁴

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.¹⁵

Section 10.441(a) of OWCP's regulations¹⁶ provides in pertinent part:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”¹⁷

Under OWCP's procedures, the compromise of all or part of the overpayment and any charges may be made depending upon the individual claimant's financial circumstances in order to set a repayment schedule. Such a determination is made at the time the repayment schedule is

¹³ *Id.* at § 10.436.

¹⁴ *M.S.*, *supra* note 7; *D.C.*, Docket No. 19-01 18 (issued January 15, 2020); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

¹⁵ 20 C.F.R. § 10.441; *see M.S.*, *id.*; *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

¹⁶ *Id.* at 10.441(a).

¹⁷ *Id.*; *see M.S.*, *supra* note 7; *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

established.¹⁸ Compromise is a matter which rests in the discretion of OWCP and is not subject to review by the Board.¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,386.00 every 28 days from appellant's continuing compensation payments.

OWCP gave due regard to the financial information submitted, as well as the factors set forth in 20 C.F.R. § 10.441, including the compromised overpayment amount, and found that this method of recovery would minimize resulting hardship.²⁰ Therefore, it properly required recovery of the overpayment by deducting \$1,386.00 every 28 days from appellant's continuing compensation benefits.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$235,858.48, compromised to \$183,569.82, for the period January 1, 2003 through July 18, 2020, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset; and that OWCP properly denied waiver of recovery of the overpayment. The Board also finds that OWCP properly required recovery of the overpayment by deducting \$1,386.00 from her continuing compensation payments every 28 days.

¹⁸ *Supra* note 9 at Chapter 6.100.6 (September 2020).

¹⁹ *Id.*

²⁰ *M.S., supra* note 7; *M.B.*, Docket No. 20-1578 (issued March 25, 2021).

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board